

2011 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB177)

Received: **09/09/2011**

Received By: **mglass**

Wanted: **As time permits**

Companion to LRB:

For: **Jim Steineke (608) 266-2418**

By/Representing: **katherine Bates**

May Contact: **Mike Bruhn (DNR**

Drafter: **mglass**

Subject: **Nat. Res. - nav. waters**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Steineke@legis.wi.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Certain general permits to be mandatory and other changes

Instructions:

Permits listed in s. 30.206 (1) to be mandatory but exempt from rule making, other genral permits discretionary and exempt from rule making, both types to have (2b) and (2m) apply

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

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Handwritten notes:
Tjs 9/9/11
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FE Sent For:

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State of Wisconsin
2011 - 2012 LEGISLATURE



50175

LRB-27777-1
MGG:rs

D-N

9:00 AM
Mon

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

js

ASA to AB177

full name
SA

Gen Cat

1 AN ACT *to renumber and amend* 30.208 (2); *to amend* 30.18 (4) (a), 30.208 (3)
2 (a), 30.208 (3) (b), 30.208 (3) (c), 30.208 (3) (e), 30.208 (4) (a), 30.208 (5) (a)
3 (intro.), 30.208 (5) (b) (intro.), 30.208 (5) (b) 4., 30.208 (5) (b) 5., 30.209 (2) (a),
4 30.209 (2) (b), 30.209 (2) (c) and 30.209 (2) (d) (intro.); and *to create* 30.208 (2)
5 (d), 30.208 (3) (f), 30.208 (4m) and 30.209 (2) (e) of the statutes; **relating to:**
6 procedures for issuing individual permits, contracts, and general permits and
7 contracts for structures, deposits, and other activities in or near navigable
8 waters.

Analysis by the Legislative Reference Bureau

Under current law, an individual permit or contract from the Department of Natural Resources (DNR) is required to place a structure or deposit in, or withdraw water from, a navigable water or to conduct a certain activity in or near a navigable water unless the structure, deposit or activity is exempt or is authorized by a general permit.

In issuing a permit or approving a contract, DNR reviews the application, determines whether it is complete, and notifies the applicant within 30 days after receiving the application whether the application is complete (30-day review period). If the application is incomplete, the applicant may supplement the

application, but DNR may not demand items of information that are not specified in the notice as a condition for determining whether the application is complete, with limited exceptions. Current law imposes no time limits on this process for determining whether an application is complete other than the 30-day review period.

Once DNR determines the application is complete, current law imposes time limits on the notice and public hearing procedures that apply to the application. Within 15 days, DNR must provide notice to the public that the application is complete (application notice). If the applicant has requested a public hearing as part of the application, a notice of public hearing shall be included in the application notice.

If the application notice does not contain a notice of public hearing, any person may request a public hearing, or DNR may decide on its own to hold a public hearing if DNR determines that there is a significant public interest in holding a hearing. The public hearing request must be submitted by the interested person, or DNR's decision to hold a public hearing must occur, within 30 days after DNR provides the application notice. Within 15 days after the public hearing request is submitted by an interested person or DNR makes its decision, DNR must give notice of the public hearing (separate notice of hearing). DNR must hold the hearing within 30 days after the notice of public hearing is either issued as part of the application notice or as an independent separate notice of hearing.

Also, DNR must provide a period to receive public comments. This period last for 30 days after the date on which DNR provides notice to the public that the application is complete or for ten days after the date that a public hearing ends, if one is held. Within 30 days after the public hearing is held or, if no public hearing is held, within 30 days of the 30-day comment period, DNR must render a decision, issuing the individual permit or contract.

Under the bill, the time limits for giving application notice and notice of public hearing are not totally dependent on the date that the application is determined by DNR to be complete. If, upon reviewing the application, DNR determines that the application is complete and that no additional information is needed, DNR shall inform the applicant of that fact within the 30-day review period. The date on which this notice is sent triggers the time limits for the public hearing process and for receiving public comments.

If DNR determines that the application is not complete, it may make only one request for additional information during the 30-day review period. There is no time limit on the applicant for providing the additional information but once it is submitted, DNR must notify the applicant within ten days as to whether the application is complete. Even if the application is not complete, the date on which this second notice is sent triggers the time limits for the public hearing process and for receiving public comments. Under the bill, the term used for such a date that triggers the time limits is a "date of closure." DNR may ask for information to supplement the one-time request for information, but such a request may not affect the date of closure.

The bill shortens some of the time limits under the public hearing and comment process. The 30-day time period for an interested party to request a public hearing or for DNR to make a decision on its own to hold a public hearing is shortened from 30 days to 10 days and the 30-day time period for the rendering a decision is shortened from 30 days to 20 days.

Under the bill, if DNR fails to comply with 30-day and ten-day time limits relating to determining whether an application is complete, the date of closure shall be the last day of the 30-day or ten-day time period. If DNR fails to comply with the time limits relating to the public hearing and comment process, the application for the permit or contract shall be considered to have been approved.

Under rules promulgated by DNR, in an administrative hearing in which an applicant is contesting DNR's decision regarding a permit or contract, the applicant has the burden of proof. Under the bill, DNR has the burden of proof if the applicant is the person who requested the hearing. If the applicant is not the petitioner, the petitioner has the burden of proof.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 30.12 (1j) (c) of the statutes is amended to read:

2 30.12 (1j) (c) If the riparian owner or owners of a property described in par. (a)
3 are eligible and propose to place a pier or wharf with the number of boat slips
4 specified in par. (a), the riparian owner or owners shall apply to the department for
5 an individual permit under s. 30.208 authorizing the configuration of the pier or
6 wharf unless the configuration is authorized by the department under a general
7 permit under s. 30.206 (1g) ~~2000S 41~~. The department may not deny the permit
8 on the basis of the number of slips proposed by the riparian owner or owners if the
9 number of slips proposed does not exceed the number allowed under par. (a). A
10 riparian owner or owners who apply for a permit under this paragraph shall be
11 presumed to be entitled to the number of slips allowed under par. (a).

12 **SECTION 2.** 30.12 (3) (a) (intro.) of the statutes is amended to read:

1 30.12 (3) (a) (intro.) The department shall ~~may~~ issue statewide general permits
2 under s. 30.206 that authorize riparian owners to do all of the following:

3 SECTION 3. 30.12 (3) (br) of the statutes is ~~amended to read:~~ repealed + +

fix component
4 30.12 (3) (br) The department may promulgate rules that specify structures or
5 deposits, in addition to those listed in par. (a), that may be authorized by statewide
6 general permits.

7 SECTION 4. 30.123 (7) (a) (intro.) of the statutes is amended to read:

8 30.123 (7) (a) (intro.) The department shall ~~may~~ issue statewide general
9 permits under s. 30.206 that authorize any person to do all of the following:

fix component
10 SECTION 5. 30.123 (7) (b) of the statutes is ~~amended to read:~~ repealed + +

11 30.123 (7) (b) The department may promulgate rules that specify bridges or
12 culverts, in addition to those listed in par. (a), that may be authorized by statewide
13 general permits.

14 SECTION 6. 30.18 (4) (a) of the statutes is amended to read:

15 30.18 (4) (a) Upon receipt of a complete application, the department shall
16 follow the notice and hearing procedures under s. 30.208 (3) to (5) The notice and
17 hearing provisions of s. 30.208 (3) to (5) shall apply to an application under sub. (3).
18 In addition to providing notice as required under s. 30.208 (3) to (5), the department
19 shall mail a copy of the notice to every person upon whose land any part of the canal
20 or any other structure will be located, to the clerk of the next town downstream, to
21 the clerk of any village or city in which the lake or stream is located and which is
22 adjacent to any municipality in which the withdrawal will take place and to each
23 person specified in s. 281.35 (5) (b) or (6) (f), if applicable.

24 SECTION 7. 30.19 (3r) (a) (intro.) of the statutes is amended to read:

1 30.19 (3r) (a) (intro.) The department shall may issue statewide general
2 permits under s. 30.206 that authorize persons to do all of the following

3 SECTION 8. 30.19 (3r) (b) of the statutes is amended to read: Repealed o x x

4 30.19 (3r) (b) The department may promulgate rules that specify other types
5 of activities, in addition to those listed in par. (a), that may be authorized by
6 statewide general permits.

7 SECTION 9. 30.20 (1t) (a) of the statutes is amended to read:

8 30.20 (1t) (a) The department shall may issue statewide general permits under
9 s. 30.206 that authorize any person to remove material for maintenance purposes
10 from an area from which material has been previously removed.

11 SECTION 10. 30.20 (1t) (b) of the statutes is amended to read: Repealed o x x

12 30.20 (1t) (b) The department may promulgate rules that specify other types
13 of removals, in addition to the one listed in par. (a), that may be authorized by
14 statewide general permits

15 SECTION 11. 30.206 (1) (a) of the statutes is repealed.

16 SECTION 12. 30.206 (1) (am) of the statutes is created to read:

17 30.206 (1) (am) Upon compliance with the requirements under subs. (2b) and
18 (2m), the department may issue a general permit to a person wishing to proceed with
19 an activity for which an individual permit is issued, or a contract is entered into,
20 under this subchapter. A permit issued under (ar) par. (a) or (am) is in lieu of any permit
21 or contract that would otherwise be required for that activity under this subchapter.

22 SECTION 13. 30.206 (1) (b) of the statutes is created to read:

23 30.206 (1) (b) A general permit issued under par (am) is valid for a period of
24 5 years, and an activity that the department determines is authorized by a general
25 permit remains authorized under the general permit until the activity is completed

and in addition to the general permits required under par. (a)

1 regardless of whether the general permit expired before the activity is completed.

2 The department may renew or modify, or revoke a general permit issued under par.

3 (a) or (am) upon compliance with the requirements under subs. (2b) and (2m) and until

4 such renewal, modification, or revocation, the general permit shall remain in effect.

5 SECTION 14. 30.206 (1g) of the statutes is repealed.

6 SECTION 15. 30.206 (1m) of the statutes is repealed.

7 SECTION 16. 30.206 (1r) of the statutes is created to read:

8 30.206 (1r) TRANSITIONS BETWEEN PERMITS. Any general permit issued under
9 this subchapter that is valid on the effective date of this subsection [LRB inserts
10 date], shall remain valid until the date upon which a general permit issued under
11 sub. (1) (am) that authorizes the same activity becomes effective.

12 SECTION 17. 30.206 (2b) of the statutes is created to read:

13 30.206 (2b) PUBLIC NOTICE. (a) The department shall circulate to interested
14 and potentially interested members of the public notices of its intention to issue a
15 general permit. Procedures for providing public notices shall include all of the
16 following:

17 1. A procedure ~~consisting of~~ ^{for} publishing a class 1 notice under ch. 985 or
18 circulating the notice by use of an electronic notification system established by the
19 department.

20 2. A procedure under which a copy of the notice is provided to any person or
21 group upon request of the person or group.

22 (b) The department shall provide a period of not less than 30 days following the
23 date of the public notice during which time interested persons may submit their
24 written views on the department's intention to issue a general permit under sub. (1)

(a) or

1 (am). All written comments submitted during the period for comment shall be
2 retained by the department and considered in the issuance of the general permit.

3 (c) Every notice issued by the department of the department's intention to issue
4 a general permit under sub. (1) (am) shall include a description of the activities
5 proposed to be authorized under the general permit.

(a) or

(a) or

6 **SECTION 18.** 30.206 (2m) of the statutes is created to read:

7 30.206 (2m) PUBLIC HEARING. (a) 1. The department shall provide an
8 opportunity for any interested state agency or federal agency or person or group of
9 persons to request a public hearing with respect to the department's intention to
10 issue a general permit under sub. (1) (am). Such request for a public hearing shall
11 be filed with the department within 30 days after the circulation of the public notice
12 under sub. (2b) and shall indicate the interest of the party filing the request and the
13 reasons why a hearing is warranted.

14 2. The department shall hold a public hearing upon a request under subd. 1.
15 if the department determines that there is a significant public interest in holding
16 such a hearing. Hearings held under this section are not contested cases under s.
17 227.01 (3).

18 (b) Public notice of any hearing held under this subsection shall be circulated
19 in accordance with the requirements under sub. (2b).

20 **SECTION 19.** 30.208 (2) of the statutes is renumbered 30.208 (2) (a) and
21 amended to read:

22 30.208 (2) (a) Review; no additional information required. In issuing
23 individual permits or entering contracts under this subchapter, the department shall
24 ~~initially determine whether a complete application for the permit or contract has~~
25 ~~been submitted and, no later than~~ review an application, and within 30 days after

1 the application is submitted, the department shall determine that either the
2 application is complete or that additional information is needed. If the department
3 determines that the application is complete, the department shall notify the
4 applicant in writing ~~about the initial determination of completeness of that fact~~
5 within the 30-day period, and the date on which the notice under this paragraph is
6 sent shall be considered the date of closure for purposes of sub. (3) (a).

7 *(b) Additional information requested.* If the department determines that the
8 application is incomplete, the department shall notify the applicant in writing and
9 may make only one request for additional information during the 30-day period
10 specified in par. (a). Within 10 days after receiving all of the requested information
11 from the applicant, the department shall notify the applicant in writing as to
12 whether the application is complete. The date on which the 2nd notice under this
13 paragraph is sent shall be set as the date of closure for purposes of sub. (3) (a). The
14 department may request additional information from the applicant to supplement
15 the application, but the department may not request items of information that are
16 outside the scope of the original request unless the applicant and the department
17 both agree. A request for any such additional information may not affect the date
18 of closure.

19 *(c) Specificity of notice; limits on information.* Any notice stating that an
20 application has been determined to be incomplete or any other request for
21 information that is sent under par. (b) shall state the reason for the determination
22 or request and the specific items of information necessary to make the application
23 complete. An applicant may supplement and resubmit an application that the
24 department has determined to be incomplete. There is no limit on the number of
25 times that an applicant may resubmit an application that the department has

1 ~~determined to be incomplete under this section. The department may not demand~~
 2 ~~items of information that are not specified in the notice as a condition for determining~~
 3 ~~whether the application is complete unless both the department and the applicant~~
 4 ~~agree or unless the applicant makes material additions or alterations to the activity~~
 5 ~~or project for which the application has been submitted that are still needed.~~

6 ~~(c) Refund of fees. The rules promulgated under s. 299.05 apply only to~~
 7 ~~applications for individual permits or contracts under this subchapter that the~~
 8 ~~department has determined to be complete.~~

9 **SECTION 20.** 30.208 (2) (d) of the statutes is created to read:

10 30.208 (2) (d) *Failure to meet time limits.* If the department fails to meet the
 11 30-day time limit under par. (a) or 10-day time limit under par. (b), the application
 12 shall be considered to have a date of closure that is the last day of that 30-day or
 13 10-day time period for purposes of sub. (3) (a).

14 **SECTION 21.** 30.208 (3) (a) of the statutes is amended to read:

15 30.208 (3) (a) ~~Upon determination by the department under sub. (2), that an~~
 16 ~~application submitted under sub. (1) is complete~~ Within 15 days after the date of
 17 closure, as determined under sub. (2) (a) or (b), the department shall provide notice
 18 of complete pending application to interested and potentially interested members of
 19 the public, as determined by the department. The department shall provide the
 20 notice within 15 days after the determination that the application is complete. If the
 21 applicant has requested a public hearing as part of the submitted application, a
 22 notice of public hearing shall be part of the notice of ~~complete pending~~ application.

23 **SECTION 22.** 30.208 (3) (b) of the statutes is amended to read:

24 30.208 (3) (b) If the notice of ~~complete pending~~ application does not contain a
 25 notice of public hearing, any person may request a public hearing in writing or the

1 department may decide to hold a public hearing with or without a request being
2 submitted if the department determines that there is a significant public interest in
3 holding a hearing.

4 **SECTION 23.** 30.208 (3) (c) of the statutes is amended to read:

5 30.208 (3) (c) A request for a public hearing under par. (b) must be submitted
6 to the department or the department's decision to hold a public hearing must occur
7 within ~~30~~ 15 days after the department completes providing provides the notice of
8 ~~complete pending~~ application. The department shall provide notice of public hearing
9 within 15 days after the request for public hearing is submitted or the department
10 makes its ~~determination~~ decision to hold a public hearing.

11 **SECTION 24.** 30.208 (3) (e) of the statutes is amended to read:

12 30.208 (3) (e) Within ~~30~~ 20 days after the ~~public hearing is held~~ period for public
13 comment under sub. (4) (b) has ended or if no public hearing is held, within 30 days
14 of the 30-day comment period under sub. (4) (a), the department shall render a
15 decision, issuing, denying, or modifying the permit or approving or disapproving the
16 contract that is the subject of the application submitted under sub. (1).

17 **SECTION 25.** 30.208 (3) (f) of the statutes is created to read:

18 30.208 (3) (f) If the department fails to comply with the time periods under sub.
19 (3) (e), a decision issuing the permit, modifying the permit, or approving the contract
20 shall be considered to be rendered. The permit that is issued or is modified, or the
21 contract that is approved, shall authorize the activity as proposed by the applicant,
22 but the department may impose terms and conditions on the permit or contract that
23 are consistent with the applicant's basic proposal.

24 **SECTION 26.** 30.208 (4) (a) of the statutes is amended to read:

1 30.208 (4) (a) The department shall provide a period for public comment after
2 the department has provided a notice of ~~complete~~ pending application under sub. (3)
3 (a), during which time any person may submit written comments with respect to the
4 application for the permit or contract. The department shall retain all of the written
5 comments submitted during this period and shall consider all of the comments in the
6 formulation of the final decision on the application. The period for public comment
7 shall end on the 30th day following the date on which the department completes
8 providing the notice of ~~complete~~ pending application, except as provided in par. (b).

9 **SECTION 27.** 30.208 (4m) of the statutes is created to read:

10 30.208 (4m) DENIALS. If a decision is issued by the department under this
11 section that denies a permit or a modification of a permit or disapproves a contract,
12 the notice of denial or disapproval shall set forth the specific reasons as to how the
13 applicable provisions of this subchapter were not met. The notice of denial or
14 disapproval may not be based on a determination that the application for the permit
15 or contract was incomplete.

16 **SECTION 28.** 30.208 (5) (a) (intro.) of the statutes is amended to read:

17 30.208 (5) (a) (intro.) The department shall, by rule, establish procedures for
18 providing notices of ~~complete~~ pending applications and notices of public hearings to
19 be provided under sub. (3), and notices of administrative hearings to be provided
20 under s. 30.209 (1m). The procedures shall require all of the following:

21 **SECTION 29.** 30.208 (5) (a) 1. of the statutes is amended to read:

22 30.208 (5) (a) 1. That the notice be published as a class 1 notice under ch. 985
23 or by an electronic notification system established by the department.

24 **SECTION 30.** 30.208 (5) (b) (intro.) of the statutes is amended to read:

1 30.208 (5) (b) (intro.) The department shall, by rule, prescribe the form and
2 content of notices of ~~complete~~ pending applications and notices of public hearings to
3 be provided under sub. (3), and notices of administrative hearings to be provided
4 under s. 30.209 (1m). Each notice shall include all of the following information:

5 **SECTION 31.** 30.208 (5) (b) 4. of the statutes is amended to read:

6 30.208 (5) (b) 4. For a notice of ~~complete~~ pending application and a notice of
7 public hearing under sub. (3), a statement of the tentative determination to issue,
8 modify, or deny a permit for the activity or project described in the application.

9 **SECTION 32.** 30.208 (5) (b) 5. of the statutes is amended to read:

10 30.208 (5) (b) 5. For a notice of ~~complete~~ pending application and a notice of
11 public hearing under sub. (3), a brief description of the procedures for the
12 formulation of final determinations, including a description of the comment period
13 required under sub. (4).

14 **SECTION 33.** 30.209 (2) (a) of the statutes is amended to read:

15 30.209 (2) (a) An administrative hearing under this ~~subsection~~ section shall be
16 treated as a contested case under ch. 227.

17 **SECTION 34.** 30.209 (2) (b) of the statutes is amended to read:

18 30.209 (2) (b) If a stay under sub. (1m) (c) is in effect, the hearing examiner
19 shall, within 30 days after receipt of the referral under sub. (1m) (g), determine
20 whether continuation of the stay is necessary to prevent significant adverse impacts
21 or irreversible harm to the environment pending completion of the administrative
22 hearing. The hearing examiner shall make the determination based on the request
23 under sub. (1m) (c), any response from the applicant under sub. (1m) (e), and any
24 testimony at a public hearing or any public comments. The determination shall be
25 made without a hearing.

1 **SECTION 35.** 30.209 (2) (c) of the statutes is amended to read:

2 30.209 (2) (c) ~~–A–~~ An administrative hearing under this section shall be
3 completed within 90 days after receipt of the referral of the petition under sub. (1m)
4 (g), unless all parties agree to an extension of that period. In addition, a hearing
5 examiner may grant a one-time extension for the completion of the hearing of up to
6 60 days on the motion of any party and a showing of good cause demonstrating
7 extraordinary circumstances justifying an extension.

8 **SECTION 36.** 30.209 (2) (d) (intro.) of the statutes is amended to read:

9 30.209 (2) (d) (intro.) Notwithstanding s. 227.44 (1), the department shall
10 provide a notice of the administrative hearing at least 30 days before the date of the
11 hearing to all of the following:

12 **SECTION 37.** 30.209 (2) (e) of the statutes is created to read:

13 30.209 (2) (e) In an administrative hearing under this section, the petitioner
14 shall proceed first with the presentation of evidence and shall have the burden of
15 proof.

16 **SECTION 38.** 227.01 (13) (rt) of the statutes is amended to read:

17 227.01 (13) (rt) Is a general permit issued under s. 30.206 or 30.2065.

18 **SECTION 39. Initial applicability.**

19 (1) The treatment of sections 30.18 (4) (a) ~~and~~ 30.208 (3) (a), (b), (c), (e), and (f),
20 (4) (a), (4m), and (5) (a) (intro.) and (b) (intro.), 4., and 5. ~~of the statutes, the~~ *and 299.05(2)(a)*
21 renumbering and amendment of section 30.208 (2) of the statutes, and the creation
22 of section 30.208 (2) (d) of the statutes first apply to applications for *individual* permits or
23 contracts that are submitted on the effective date of this subsection.

24 (2) The treatment of section 30.209 (2) (e) of the statutes first applies to
25 administrative hearings that are commenced on the effective date of this subsection.

SECTION 40. Effective date.

(4) This act takes effect on first day of the 4th month beginning after publication.

(END)

d-note

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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MGG:.....

1 **Insert 5-16 15**

2 **SECTION 1.** 30.206 (1) (a) of the statutes is amended to read:

3 30.206 (1) (a) The department shall issue the statewide general permits as
4 ~~rules promulgated under ch. 227 required under ss. 30.12 (3) (a), 30.123 (7) (a), 30.19~~
5 ~~(1d), and 30.20 (1t) (a). The statewide general permits required under ss. 30.12 (3)~~
6 ~~(a), 30.123 (7) (a), and 30.20 (1t) (a) shall be promulgated within 540 days after~~
7 ~~February 6, 2004. The department shall submit in proposed form the rule containing~~
8 ~~the statewide general permit under s. 30.19 (3r) (a) and the rule under s. 30.19 (1d)~~
9 ~~to the legislative council staff under s. 227.15 (1) no later than August 1, 2004.~~
10 ~~General permits issued under s. 30.206, 2001 stats., shall remain valid until the date~~
11 ~~upon which the rules issuing these statewide general permits are promulgated~~
12 ~~under this paragraph.~~

13 **Insert 13-17**

14 **SECTION 2.** 299.05 (2) (a) of the statutes is amended to read:

15 299.05 (2) (a) Permits, contracts, and other approvals under ss. 30.10 to 30.205
16 and 30.21 to 30.27, except for individual permits and contracts to which s. 30.208
17 applies.

History: 1997 a. 27, 301; 2003 a. 118, 310.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0175/?dn

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gjs

— date —

Representative Steineke:

This amendment makes changes regarding the mandatory permits found listed in s. 30.206 (1) (a) of the current statutes, as you and DNR requested. It also makes the following changes which I feel are necessary:

1. The treatment of the cross-reference to s. 30.206 (1g) that is found in s. 30.12 (1j) (c) is changed. The treatment under Assembly Amendment 1 to Assembly Bill 177 would require DNR to always apply in the future the general permit issued under s. 30.206 (1g) as it stands on the effective date of the bill, thereby eliminating DNR's power to issue other general permits relating to the configuration of piers, or wharves.

2. The language in s. 30.206 (1) (am) is changed because a general permit is not issued to a person. This is the item I discussed with Megan Correll, and she agrees that the language needs to be corrected.

3. I have struck the last sentence of s. 30.208 (2) because the date of completeness is no longer the trigger for deadlines under s. 30.208; the date of closure is, and there always is a date of closure. See proposed s. 30.208 (2) (d). Therefore, the last sentence in s. 30.208 (2) (a) that states that s. 299.05 applies only to complete applications does not work. I also needed to treat s. 299.05 (2) (a) to exempt from s. 299.05 (the permit guarantee program) individual permits and contracts that are subject to s. 30.208. These treatments result in making fee refunds under s. 299.05 inapplicable to these exempted permits contracts.

If you still want DNR to refund a fee when the deadlines are not met even though the individual permit or contract will be considered to be issued, this will need to be redrafted.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0175/1dn
MGG:cjs:ph

September 12, 2011

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